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KELI

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May 23, 1994

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, D. C. 20554

RE: MM Docket 94-34

Dear Mr. Secretary:

My wife and I own one Class C FM in a West Texas market of almost 100,000. I wanted to let you and all the commissioners know of the difficulty we have had in the past in complying with EEO requirements, and of the difficulties and problems we foresee in trying to comply with the new requirements which were announced earlier this year. It is our fear that despite our best faith efforts to promote equality of employment and promotion opportunity at our station, that we may at some time be fined a minimum of \$12,500 which we will not be able to pay, since the station is barely breaking even as it is. This potential fine will not be due to actions on our part, but due to a lack of action on the part of minority applicants in responding to our employment opportunities.

First, as background, let me tell you a little about our station and our market. San Angelo is literally 100,000 people in the middle of nowhere. The nearest city of any size is 90 miles away. The population is approximately 26% Hispanic and less than 5% Black.

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KELI's 1994 employment report shows that we have 15 full time employees and 9 part time employees. Our "Top 4" categories are 54% female and 15% Hispanic. Our total full time employees are 60% female and 13% Hispanic. The part time staff (some of whom only work 6 hours per week,) is 33% female and 11% Hispanic. All of these, except for the part time personnel, qualified us under the old "parity" rules. As you can see, we have done an excellent job in hiring and promoting women, and a pretty good job in hiring and promoting Hispanics. (We had one more Hispanic in our Top 4, but he committed suicide in September of last year. His position had not been filled as of the date of the employment report.)

The problem that we have seen occur over and over again is the same one that we feel will adversely affect our ability to carry out the Commission's mandate of promoting equality of employment and promotion opportunity, as defined under the February rules. That problem is a lack of response among minority applicants to our employment opportunities. We have notified minority service clubs (Lion's Clubs, etc.,) minority churches, and minority social organizations of our openings. We advertised on our own air, since Arbitron tells us that 21% of our listeners are Hispanic. We also used the classified section of the local newspaper. We have even spent over \$600.00 this year to advertise in publications directed specifically at minority job seekers. I would say that the results of our good faith effort to attract minorities have been less than successful. Minority applicants simply do not apply at KELI in the numbers needed to assure us that we will not incur a fine under the February rules. Our station is located in an area of town where over half of the residents are either black or Hispanic, and they don't even come to

the building. Qualified minority prospects are in demand in many industries. In this market, we compete with Levi Strauss, GTE and Johnson & Johnson for minority applicants. A "mom and pop" operation like ours just can't hold a candle to the wages and benefits that companies like those can pay. Furthermore, many minorities who are ambitious and want to improve their lives often leave this town and go to larger cities where the pay scale and the opportunities are better. This leaves radio station owners like us in the unenviable position of having done everything that both their Washington attorneys and other reputable broadcasters have suggested to insure a pool of minority applicants, and still we come up short. **In order to avoid a fine for a "less than adequate pool of minority applicants," an unscrupulous operator might be tempted to go down to the local office of the state employment commission, round up every person of color, and get them to fill out an application.** This is not my intent, and I am sure that this is not the desire of the commission. But **if you are going to judge the EEO efforts of broadcast stations solely on the basis of how many people of which color apply, you will be opening the door to that very sort of employment application stacking, and it will do nothing to further your goals of promoting equality of employment and promotion opportunities.** (While we're on the subject of applicants, will you please explain to me why we are forbidden by one Federal law from asking someone what their race is, but we are required by another Federal law to report the race and sex of everyone who applies?)

I would now like to comment on the specific issues addressed by the Commission in the Notice of Inquiry adopted April 20, 1994.

Paragraph 21: "Small market broadcasters" should receive some sort of allowance for compliance with EEO rules and policies. Aside from the lack of applicants problem outlined earlier, one of our biggest concerns is that the rules for EEO compliance changed radically earlier this year; yet we have no way of knowing what constitutes compliance anymore. Under the old parity system, we at least had a way of knowing if we were meeting the standard or not. The new rules are so vague and nebulous that we can't tell if we are complying or not. Please give us a clear standard.

Paragraph 22: Your policy of focusing on full time employees should continue. I would recommend a minimum of 21-25 hours per week before a broadcaster could receive appropriate consideration for an employee. This would insure that employees who were working at least half of a full work week would be included, while others who worked, for example, only 12 hours on a weekend would be excluded.

Paragraph 23: I would not recommend requiring broadcasters to encourage female and minority entrepreneurs to conduct business with all parts of their operation. It hasn't worked to encourage minorities to apply for employment, and it won't work to encourage them to do business with us, either. Worse yet, broadcasters might become subject to parity rules for their suppliers. This could result in broadcasters being forced to pay more for a product (or perhaps get less for the same amount of money,) all because of a Federal mandate. Almost half of all radio stations in the country losing money already; supplier parity would make it even worse.

Paragraph 26: Something must be done to decrease the administrative burden placed on broadcasters by EEO compliance. It is almost to the point that we need a full

time person to handle EEO matters. Perhaps stations in larger markets can afford a full time employment director to handle EEO matters, but smaller market radio stations cannot.

Paragraph 27: The standard inquiry letter requesting recruitment and hiring information for the last three years of the license term needs to be changed. A better way would be to require any 4 or 5 of the last 7 years. This would encourage licensees to keep their EEO programs going through over half of the license term, and not just for the last 3 years. The only *caveat* to this is that if the EEO rules change in the middle of a 7 year license term (as just happened this year for those of us in Texas,) it will be extremely difficult for both the Commission and the licensee to determine if compliance had occurred over the entire seven years. On site audits should be discouraged in all but the "worst" cases. The Federal Government is already running a huge budget deficit, and this would only increase it. Even ASCAP and BMI audit only once every 4-5 years.

Paragraph 28: Some distinction does need to be made between full time and part time hires. The commission does not need to monitor promotion of part time employees to full time, but there does need to be a way for a broadcaster to get credit (perhaps extra credit in some way,) for promoting minority and female employees from part time to full time status. More detailed recruitment and hiring information, such as for every vacancy filled during the renewal year is a horrible idea. It puts additional administrative strain on already overworked broadcasters, and places all the emphasis on the last year of the license. This does not further the aims of the Commission because it focuses on

performance in only one year, and it could hurt an otherwise exemplary broadcaster who just happened to have a bad recruitment year in year 7.

Thank you for the opportunity to present my comments to the commission.

February's new EEO requirements, however, make it just about impossible for a licensee in a market of this size to comply with the law. It's not that I don't want to comply, and it's not that I haven't tried to comply in the past; it's just that the new rules place the success or failure of our entire EEO program on the performance of other people in responding to our employment opportunities, and not on our performance as licensee. It is not fair and it is not right to fine any station \$12,500 or more because of a lack of response to diligent recruitment efforts.

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg Thomas', with a stylized, looping flourish extending to the right.

Greg Thomas
President & Co-Owner
Earshot Broadcasting, Inc.
Licensee for KELI (FM)
San Angelo, TX